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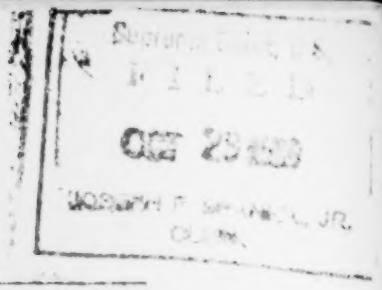

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

FRANK L. GRAY - PETITIONER

vs.

STATE OF INDIANA, et al. - RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FRANK L. GRAY

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QUESTIONS PRESENTED

Question #1 - Is a person under 'civil restraint' of his liberty within the 'custody' requirement of the Habeas Corpus Statutes, as contemplated by the 1966 amendments to the Habeas Corpus Statutes; when it can be shown that person is being denied 'gainful' employment opportunities and is presently suffering a 'foreclosure of opportunities' and other 'lawful restrictions', due 'solely' to a felony conviction?

Question #2 - Should a person be forced to 'suffer' the 'collateral consequences' of a convicted felon and be barred from applying for 'federal review' of that conviction, upon expiration of 'physical custody', because he failed to file a timely application under habeas corpus while he was 'physically detained' but he is still 'under lawful restrictions of his liberty' 'solely' because of that conviction?.

CERTIFICATE OF SERVICE

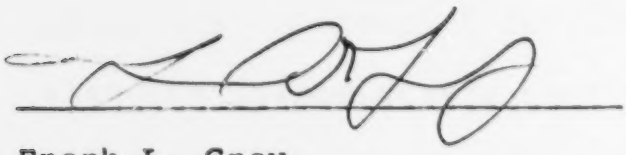
I do hereby certify that (3) copies, as instructed by the clerk of the United States Supreme Court, of the foregoing, revised, 'Petition for Writ of Certiorari' has been duly served by the U.S. Postal Service, on this 10th day of November, 1990, by certified mail to: (certification of service on file)

Office of Attorney General

David A. Arthur, Deputy Attorney General

219 State House

Indianapolis, IN 46204-2794



Frank L. Gray

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No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1990

FRANK L. GRAY - PETITIONER

vs.

STATE OF INDIANA, et al. - RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Petitioner, Frank L. Gray, respectfully prays that a writ of certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Seventh Circuit in refusing to issue a Certificate of Probable Cause, and denying Petition for Writ of Habeas Corpus. Petitioner alleges that he is suffering and is under 'civil restraint' of his liberty due

solely to a felony conviction and that he was denied 'fundamental fairness' in his post-conviction proceeding.

OPINIONS BELOW

The opinion of the Court of Appeals is reported as No. 89-3343 and appears in Appendix F. Petition to Rehear Application for Certificate of Probable Cause is reported as Appendix G. By order of the Distrit Court of Northern Indiana denying Certificate of Probable Cause is reported Appendix E. The judgement on Petition for Habeas Corpus in the District Court is reported as Appendix D. The opinion in the United States Court of Appeals for Petition for Violation of Civil Rights, under 42 U.S.C. Section 1983 is reported as Appendix C. A letter of denial of employment with the United States Post Office, Chicago, IL is reported as Appendix B. An extension of time to file Writ of Certiorari in the United States Supreme Court is reported as Appendix H.

JURISDICTION

The Court of Appeals opinion in this matter was filed on or about March 30, 1990. A timely Petition for Rehearing was filed on April 10, 1990. The Court of Appeals denial of Petition for Rehearing was issued on May 21, 1990.

This Court's jurisdiction is invoked under Title 28; U.S.C. Section 1651(a), U.S.C. Section 1331, U.S.C. Section 1291, U.S.C. Section 2241(c)(3), U.S.C. Section 2254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution; Amendments I, V, VI, XIV.

United States Code-Title 28; Sections, 2241(c)(3), 2243, 2244, 2254, and 2255.
United States Code-Title 18; Section 242.
United States Code-Title 42; Section 1983.
Civil Rights Act of 1871, Civil Rights Act of 1964, Judiciary Act of 1789, Criminal Justice Act of 1964, Appeal & Error Section 1662.

STATEMENT OF THE CASE

Petitioner was convicted, on or about Sept. 5, 1985, of child-molesting. Petitioner was sentenced to one year in prison on October 3, 1985. Petitioner appealed his conviction, as an indigent, was appointed an attorney from the Lake County Public Defender's Office and petitioner was notified on or about Dec. 26, 1985 by appointed counsel. Counsel for petitioner assured she would contact him as soon as his appellate brief was prepared. On April 2, 1986, Petitioner was released on parole. Petitioner received no information concerning his appeal. On or about Aug 1, 1986, after writing Petitioner's public-defender but receiving no response, Petitioner contacted Public Defender's Office by phone. Another attorney informed Petitioner that his public defender had delayed his appeal six times and decided to drop the case because of her case load. Petitioner was never formally informed. Petitioner protested, and another public-defender decided to present

Petitioner's post-conviction remedy to the state court of appeals. Appeal was prepared an submitted Aug. 25, 1986. Petitioner was released from 'physical custody', as his sentence had been 'fully served' but Petitioner's conflict with the state had not ended. Dec. 11, 1986, the Court of Appeals of Indiana refused to overturn Petitioner's conviction, two months after his release from 'physical confinment', and technically barring Petitioner to petition for Writ of Habeas Corpus by prisoner in 'physical custody'.

On or about Feb. 11, 1987, Petitioner filed a complaint in the District Court of Northern Indiana Magistrate under 28 USC 1983. Petitioner wishes to express to this Court that he was and is not knowledgable in petitioning federal court and has been unable to afford an attorney. Petition was denied and appealed to the Court of Appeals for the Seventh Circuit (Appendix C), appeal was denied Jan. 11, 1989.

On or about May 22, 1989, Petitioner filed a Petition for Habeas Corpus as a person under 'civil restraint' in the District Court of Northern Indiana, petition was denied Aug. 25, 1989 (Appendix D). Petitioner's Application for Certificate of Probable Cause was denied by District Court Oct. 20, 1989 (Appendix E). Where appealed to the Court of Appeals for the Seventh Circuit, application was denied (Appendix F), March 30, 1990 and subsequent Petition to Rehear was denied May 21, 1990. August 15, 1990, Petitioner requested and was granted an extension of time to file Writ of Certiorari (Appendix H).

REASONS FOR GRANTING WRIT

Certiorari should be granted because Petitioner presents an issue resolved by implication by this Court but not specifically and unequivocally decided by this Court and the opinions below conflicts, or at least raises a question that is debatable among jurists of reason. By the

issuance of an Extraordinary Writ or Writ of Habeas Corpus, this cause can aid the Court's appellate jurisdiction to review allegations of restraints other than 'physical confinement', hence 'civil restraints' not shared by the public generally; lawful restraints that are presently being imposed or restraints that may be imposed against 'convicted felons' or 'ex-convicts' in the future, by state legislatures or acts of Congress.

This case can aid the Court's appellate juris- diction in cases where Congress and/or states have lawfully created a 'new invidious class of people', people that are being 'denied' equal protection under the Civil Rights Act of 1964 and the Civil Rights Act of 1871. The creation of an 'invidious class of people', felons, present exceptional circumstances warranting the exercise of this Court's discretionary powers, in that 'felons' are subjected to 'broad variances of prejudice and discrimination'. And adequate

relief cannot clearly be obtained in any other form or from any other court.

Although petitioner's detention has been terminated, this controversy with the State of Indiana in which I was convicted has not ended and relief on merits as to the consequences of Petitioner's conviction is supported in Appeal & Error Sec. 1662. Petitioner prays for relief other than immediate release from custody in view of the fact that his conviction was in violation of his constitutional rights to due process. The 1966 Amendments to the Habeas Corpus Statute specifically contemplate the possibility of relief other than immediate release from physical custody [Walker v Wainwright, 390 U.S. 335].

In [Mizell v Attorney General of State of N.Y., C.A.N.Y. (1978), 586 F.2d. 942], the court ruled in-part "..ask for relief other than immediate release from physical custody in view of fact that conviction might have subjected him to disabilities or burdens and

to collateral consequences, petitioner could apply for such relief..".

Petitioner prays for such relief because he is suffering a loss of equal employment opportunities and is forced to bear other 'prejudicial' or otherwise 'lawful' 'civil restraints' of his liberty as may be imposed by future legislative acts because petitioner is an ex-convict.

As in [Glover v State of North Carolina, 301 F.Supp.304 (1969)];

> [1,2] Although the petitioner in the present case did not file his application while he was serving the sentence which he attacks, he nonetheless will suffer disabilities and restraints on his liberty as a result of his having been convicted of seven felonies. He will not have the right to do many things that free men are entitled to do. The court is of the opinion that such disabilities and restraints are sufficient to give him standing to challenge his convictions in federal habeas corpus regardless of whether the filing of his petition occured before or after the termination date of the challenged sentences. It is not actual physical custody during service of a sentence that gives standing in habeas corpus; it is instead the restraint on liberty, whether physical or of a more subtle nature....
> ....Instead his standing (in habeas corpus) hinges upon the substantiality of the restraints that flow from the conviction he

attacks....

The court in [Glover] seems to contradict what the Circuit Court of Appeals and the District Court has ruled in Petitioner's case, this Court should be willing to address this conflict to clarify that Petitioner does have standing to challenge his conviction in federal habeas corpus. The [Glover v State of N.C.], case represents in-part the issues that the Petitioner wishes to present to this Court. The courts have not 'clearly' defined Petitioner's present 'civil restraints' that flow from a criminal conviction as grounds for habeas corpus relief.

Further, in [United States Ex Rel. Lawrence v Woods, 432 F.2d.1072 (1970)], the court relied in-part on Habeas Corpus [key] 10, and states that "..Although a petitioner has served sentence.."..his habeas corpus proceeding will be considered moot only if it is shown that there is no possibility that any collateral consequences will be imposed on basis of the conviction..". Clearly, in

Petitioner's case, collateral consequences are being suffered by petitioner. By being denied an opportunity to obtain 'gainful' employment with the U.S. Postal Service (see appendix B), clearly Petitioner is being forced to bear the consequences of an assertly unlawful conviction and is being forced to endure personal prejudices of others due to the nature of Petitioner's conviction. There appears to be a conflict, or lack of clarity, in the courts definition of 'custody', this Court should seize this opportunity to define 'custody' in a manner more conducent with the 1966 amendments to the habeas corpus statutes.

In [Genusa v City of Peoria, 475 F.Supp. 1199 (1979)], and refering to Convicts [key] 1, "Certain disabilities may be imposed on convicted felons if designed to accomplish a legitimate governmental purpose and such is a constitutional exercise of legilative power". Clearly Petitioner is presently under some type of 'restraint' as allowed by law. When

certain 'disabilities' could lead to an ex-convict going to prison for violating laws or statutes that restrict his freedom to receive, possess, or transport in commerce any firearm, is a foreclosure of an opportunity, this clearly is more than a 'disability', this is a 'liability' and should be considered 'civil restraint' as to Habeas Corpus statutes. The Court should seize this opportunity to further clarify it's definitions of 'disabilities of a convicted felon' or 'criminal liabilities' or 'restraints not shared by public generally' or 'collateral consequences' of a convicted felon being under 'civil restraint' within the intent of the habeas corpus statutes.

In light of the present 'disabilities' of a convicted felon, and in light of [Clay v Riddle, C.A. Va 1976, 541 F.2d 456], the court refers to Habeas [key] 89 - "Though defendant had served out his term, he could still test validity of his conviction by Habeas Corpus.." and Judgement & 316 -

collateral review - showing actual harm, "4a, 4b. Collateral review of a final judgment is not warranted absent a showing that the complaintant suffers actual harm from the judgment that he seeks to avoid..". Based on [Clay] there is definitely a contradiction in the lower court ruling in the Petitioner's case, Petitioner prays this Court would clarify these contradictions.

28 USC & 2241 et seq. does not require that a petitioner bear the consequences of an assertedly unlawful conviction.
28 USC & 2241 et seq. does not limit the relief that may be granted, there is broad mandate with respect to relief.

Petitioner is being lawfully barred or restricted from certain businesses, barred from possessing or carrying firearms to protect himself and his property, and can be subjected to further 'civil restrictions' as required by acts of legislation. This Court should seize this opportunity to clarify what are 'civil restraints of a man's liberty'.

In [Matzner v Davenport, D.C.N.J. 1968, 288 F.Supp 636]
28 USC & 2241(c)(3) - Conviction imposes conditions which significantly confine and restrain Petitioners freedom and therefore

constitutes state 'custody' from which, as a former prisoner, can seek relief by Habeas Corpus..
28 USC & 2243 Note 31 - Restraints on a man's liberty, which are other than physical imprisonment and not shared by public generally are sufficient to support issuance of Habeas Corpus.

In [Carafas v. LaVallee, N.Y.1968, 88 S.Ct. 1556. 20 L. Ed.2d 554];
28 USC & 2244 - Purpose - The purpose of this chapter is to provide an effective and speedy instrument by which judicial inquiry may be had into legality of detention of a person, but this chapter does not limit the relief that may be granted to discharge of applicant from physical custody; this chapter contemplates the possibility of relief other than immediate release from physical custody.
Habeas Corpus 92(1) - broaden habeas corpus to consider personal rights affected by conviction.

Because the 'custody' requirement has been expanded, this Court should clarify that Petitioner is in fact suffering restraints in his movements and his ability to make or enforce contracts according to various state laws and federal statutes.

In [U.S. v Kozerski, D.C.N.H. 1981, 518 F.Supp. 1082];

In reference to Habeas Corpus [key] 50 - Petitioner had standing to challenge his convictions in federal habeas corpus regardless of fact that the filing of his petition occurred after the termination

date of the challenged sentences.

It is clear that having a felony conviction exposes a person to further imprisonment for violating certain laws imposed by Congress or any state concerning firearms. Where the general public may not have to endure this punishment, this, clearly, is not a 'disability' but a 'criminal liability', which could result in enhanced prison confinement. This Court should seize this opportunity to clarify 'disabilities and burdens' from 'criminal liabilities' by reasons of the habeas corpus statutes.

> In [Marchese v State of Cal., C.A.Cal. 1976, 545 F.2d. 645]; "There is legitimate state interest in minimizing the felonious use of firearms and legislature may reasonably decide that persons with criminal convictions have more of a tendency to commit crimes of violence than persons without criminal records..."

Petitioner prays the Court sieze this opportunity to clarify that Petitioner should not be forced to bear these 'lawful' prejudicial restraints as in [Marchese] and as well as in [Ransom v Wainwright, C.A.Fla.

1977, 553 F.2d. 900, 98 S.Ct. 206] where the court dissented:

> Florida statute proscribing possession of firearms by convicted felons is not unconstitutional as an infringement of equal protection because of creation of an invidious class, felons.

Petitioner has been placed in a catagory or class of persons not conducant to the general public as freepeople, Petitioner has been placed in an invidious class, felons.

> In [Green v Missouri Pacific Railroad Co., 523 F.2d. 1290], and in reference to Title VII of Civil Rights Act of 1964; ....Employers only need establish a 'business necessity' not to hire persons convicted of a crime....
>
> In [Smalley v Eatonville, City of; 640 F.2d 765 (1981)]; "....The inability to bond convicted felons is valid grounds to violate equal employment opportunity statutes....

For Petitioner, in order to obtain 'gainfull' employment from employers or employer representatives, to have to litigate every potential employer under the Civil Rights of Act of 1964 should be in itself undue hardships to a convicted felon and should be considered civil restraint as a test to Habeas Corpus. The Court has not

clearly defined the loss of certain undisputed rights as a civil restraint under Habeas Corpus Statutes.

In light of [Schanuel v Anderson, 546 F.Supp.519 (1982)], and in that case the court relied on [U.S. v Giles, 640 F.2d 621 (5th Cir. 1981);

> In Giles the defendant challenged the constitutionality of a federal statute which made unlawful the receipt of firearms by an ex-felon. The defendant argued in effect that it is irrational for Congress to presume that those persons who have been convicted of a non-violent crime are more likely than the ordinary citizen to engage in violent crimes involving firearms in the future. The court held, however, that the statute was constitutional because this presumption is in fact very rational.

While being considered as an ex-felon, it is true that there are moral stigmas that must be endured. But when this stigma results in acts of law that could lead an ex-convict to further prosecution and incarceration, he should be considered in jeopardy of future confinement, therefore it should be granted that he is under the definition of 'civil restraint' under habeas corpus.

> Further, [Dixon v McMullen, 527 F.Supp. 711 (N.D.Texas 1981)]: The court relied on [Giles] to hold that a state statute automatically excluding ex-felons from certification as police officers was constitutional.. ..because persons who have committed serious crimes in the past have demonstrated a greater potential for 'abuse' of rights and privileges.

These are lawful restrictions placed upon ex-convicts and Petitioner should not be forced to suffer these 'lawful' restrictions of his personal freedoms due to an assertedly unlawful conviction. Clearly, these laws and statutes that restrict what an ex-convict may or may not do is a 'foreclosure of opportunities', opportunities that the general public is quaranteed equal protection to. The Court should seize this opportunity to clarify it's position on 'civil restraints of a convicted felon'.

> The Civil Rights Act of 1871 - Section 1981 of this title provides that "All persons within the jurisdiction of the United States shall have the same rights * * * To make and enforce contracts * * * * as is enjoyed by white citizens * * *.

The courts have not directly addressed the 'rights' of a convicted felon, since Congress, the states, and the courts have

created an invidious class, felons [Ransom v Wainwright, 533 F.2d. 900]. The law appears to negate individual's protections under this Act if he is a convicted felon. The Court should take this opportunity to clarify this denial of 'expressed rights' to felons is a 'civil restraint' not shared by the public generally'. When a person cannot legally obtain 'gainful' employment because of a felony conviction, shouldn't the Courts rule that he is restrainted of his liberty? When an ex-convict is barred from 'equal protection' under the Civil Rights Acts of 1871 and 1964, ' to make and enforce contracts ', shouldn't he be considered as beening under 'civil restraint'? The lower courts in this Petitioner's case relied upon [Maleng v Cook, 109 S.Ct. 1923 (1989)]. However, the court in [Maleng v Cook] did not attempt to define 'custody', this Court should clarify that custody has been redefined according to the 1966 amendments to the Habeas Corpus Statutes.

In [Hensley v Municipal Court, 36 L Ed 2d 1012]; [a] Generally - "As the court pointed out in [Jones v Cunningham (1963) 371 US 236, 9 L Ed 285, 83 S.Ct. 373], under 28 USCS & 2241 the availability of the writ of habeas corpus is limited to those "in custody", but the statute does not attempt to mark the boundaries of "custody", nor in any way other than by the use of that word, attempt to limit the situations in which the writ may be used..." "...Also, the Supreme Court has held that the custody requirement is satisfied by a prisoner who seeks federal habeas corpus relief from confinement which he would or might be subjected to in the future."

The Petitioner should point out the words 'would' and 'might' in the above summary. Petitioner 'might' be subjected to enhanced confinement in the future should he be arrested and charged in a subsequent felony charge or a firearms charge, the court should seize this opportunity to futher clarify 'future confinment' under the habeas corpus statutes, that Petitioner is in jeopardy of future confinment should he attempt to exercise the rights of the possession of firearms, as afforded the general public, he is subject to punishment merely for the fact he is an ex-convict.

> Further in [Hensley v Municipal Court]; In the court's opinion: "....the court in [Jones v Cunningham (1963) 9 L Ed 285, 83 S.Ct. 373], declared that history, usage, and precedent can leave no doubt that, besides physical imprisonment, there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English- speaking world to support issuance of habeas corpus. Accordingly, the court determined that restraints on a petitioner's liberty to do things which in this country free men are entitled to do are enough to invoke the help of habeas corpus.

Petitioner wishes to point out, that being refused a good and secure position with the U.S. Postal Service because of a felony conviction, that being barred from possessing, transporting firearms because he is an ex-convict, and the many other 'lawful restrictions' placed on convicted felons, clearly bars Petitioner from doing things which in this country free men are entitled to do. This Court should seize this opportunity to clarify the Petitioner's present 'restrictions' and 'lawful restraints' as grounds to support relief under habeas corpus.

Again returning to [Hensley v Municipal

> Court]: Sec. 8 - Unconditional release; "....The dissenters pointed out that although it was true that under 28 USCS & 2241(c) the writ will not issue unless the applicant is 'in custody', the statute does not impose the same restrictions upon the grant of relief, but rather under 28 USCS & 2243, the federal courts are given a broad grant of authority to 'dispose of the matter as law and justice require...."
> "....The court, moreover, stated that the petitioner was suffering, and would continue to suffer, serious disabilities because of the law's complexities and not because of his fault, if his claim that he had been illegally convicted was meritorious...."

[Hensley v Municipal Court] clearly provides that given the broadened definition of 'custody' there are other forms of relief from suffering that this Court should address in Petitioner's case. Also in [Carafas v Lavallee, 20 L Ed. 2d 554, 88 S.Ct. 1556];

> "....The 1966 amendments to the habeas corpus statute seem specifically to comtemplate the possibility of relief other than immediate release from physical custody. At one point, the new 28 USCS & 2244 (b) (1964 ed., Supp II) speaks in terms of 'release from custody or other remedy"....

The Court should seize this opportunity to further define relief other than immediate release from physical custody as a test of 'custody'. Finally, in [Eldridge v Peyton,

205 F.Supp. 621 (1968)], petition was denied because;

> "....even though the definition of 'custody' had been liberalized and broadened the petitioner was not on parole or serving a recidivist sentence based on the challenged conviction...."
> "....No apparent injustice could be rectified by a judgement for petitioner. He has several other felony convictions on his record and is presently serving a prison sentence due to one of them. These convictions would carry the same consequences, both civil and social, as the conviction which is challenged by this petition. Therefore, the conviction complained of would not appear to result in any additional moral stigma or affect any additional legal rights since there are other felony convictions on petitioner's record...."

In Eldridge v Peyton, the court implies, but does not clearly and undoubtedly, that if the conviction complained of would result in additional moral stigma or affect any additional legal rights the petition would not have been denied. This Court should seize this opportunity to clarify the meaning in Eldridge v Peyton in regards to the 'loss of legal rights'. In the petition before this Court, Petitioner complains that his conviction has lead to additional moral

stigma and that due to his conviction he has suffered the loss of legal rights, including rights under the Civil Rights Act of 1871 and Title VII of the Civil Rights Act of 1964. The Petitioner was never had a previous felony conviction, the restraints that I now suffer have stemmed directly from my felony conviction in the State of Indiana. The Court should seize this opportunity to further define that the loss of 'certain legal rights' is in fact 'civil restraint' and within the meaning of the habeas corpus statutes.

This Court should grant certiorari in this case in order to explicitly rule that persons denied 'equal protection' under 'Title VII of the Civil Rights Act', or any other Act of Congress, due to a felony conviction is in fact under 'civil restraint' according to the 'custody rule' to habeas corpus.

The petitioner before this Court claims that he was barred from appealing his case

under habeas corpus while the state had not ruled on his state appeal. Also, that his court-appointed attorney 'interfered' with the appeal to the state by repeatedly delaying the submitting of her arguements on the petitioners behalf and in violation of Petitioner's 14th amemdment rights and in violation of 28 USCS & 2254.

In Rose v Lundy, 455 US 509, 71 L ed 2d 379, 102 S.Ct. 1198;
The Honorable Justice Stevens dissenting:

....In my opinion claims of constitutional error are not fungible. There are at least four types....
....The fourth category includes those errors [455 US 544] that are so fundamental that they infect the validity of the underlying judgement itself, or the integrity of the process by which that judgement was obtained. This category cannot be defined precisely; concepts of 'fundamental fairness' are not frozen in time. But the kind of error that falls in this category is best illustrated by recalling the classic grounds for the issuance of a writ of habeas corpus that the proceeding was dominated by mob violence, that the prosecutor knowingly made use of perjured testimony, or that the conviction was based on a confession extorted from the defendant by brutal methods. Errors of this kind justify collateral relief no matter how long a judgement may have been final and even though they may not have been pre-served properly in the original trial....[Mooney v Holohan, 294 US 103, 79 L ed 791, 55 S.Ct.

340]

In using the Honorable Justice's dissent in-part, this Court should seize an opportunity to review Petitioner's conviction, to clarify the weight and depth of the allegations of 'fundamental unfairness' brought by Petitioner before this Court. Petitioner's entire trial court proceeding, including his state appeals process, was so lacking in 'fundamental fairness' as it appeared 'mob-like'.

Without requiring substantial proof, this trial and postconviction proceeding would appear to have been dominated by a conspiracy;

1- the prosecutor knowingly made use of perjured testimony,

2- the prosecutor maliciously allowed erroneous testimony to prevail,

3- the prosecutor maliciously made remarks to a male juror as to his conduct toward his daughters,

4- the prosecutor encouraged witnesses to

submit hearsay testimony,

5- trial court judge failed to admonish prosecutor for her conduct,

6- the trial court judge instructed jurors that they need not review previous statements and reports concerning witness testimony during deliberations,

7- the trial court judge refused to grant any motion to correct errors,

8- the pre-sentencing trial's parole officer repeated false, prejudicial remarks that he should have known were false,

9- the pre-sentencing parole officer made prejudicial statements of a prior, unlawful, arrest,

10- on appeal of conviction as indigent, court- appointed counsel delayed, delayed, and delayed again (six times) submitting indigent's appeal to the state court of appeals,

11- when Petitioner complained to the public-defender's office, court-appointed counsel abruptly transfered the case to

another public-defender and without a formal withdrawal notification, without formal explaination,

12- the second public-defender refused to submit evidence or arguements that the state's witnesses perjured and provided misleading statements during testimony and in depositions, the public defender replied to the Petitioner as his response to allegations of perjury, "everybody lies a little",

13- no state official or legal representative informed Petitioner of his rights to apply for review under habeas corpus.

If this instance is in any way demonstrative of what the Honorable Justice Stevens dissented to; this Court should seize this opportunity to clarify "fundamental fairness" based on constitutional right. And that due to the fact the Petitioner still suffers from the alleged unlawful conviction, protection under habeas corpus is justified and that relief should be granted.

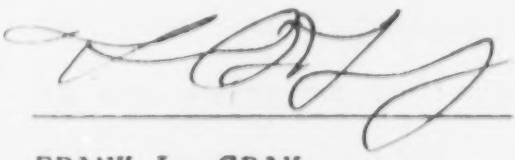
CONCLUSION

Petitioner seeks relief other than immediate release from physical custody in view of the fact petitioner is suffering; that this conviction has and is subjecting Petitioner to disabilities or burdens and collateral consequences as a convicted felon.

For the reasons set forth above, a writ of certiorari should issue to review the judgement and opinion of the Court of Appeals in the Seventh Circuit in this matter. (footnote).

DATED: OCTOBER 19, 1990

Respectfully submitted,



FRANK L. GRAY

PRO SE PETITIONER

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footnote: If this Court elects not to address the issues presented in this writ at the present time, Petitioner requests that the writ issue and that the matter be remanded to the Court of Appeals for redetermination in light of this Court's opinions in previous rulings.

APPENDIX B

Letter of Employment Denial

UNITED STATES POST OFFICE

Chicago, Il. 60607-9404

December, 18, 1987

Mr. Frank L. Gray

Post Office Box 2950

Gary, IN 46403-0950

Dear Mr. Gray:

This refers to your application for Custodian.

On your application you admitt a conviction in the state of Indiana for child molesting in October 1985 receiving one year imprisonment.

After careful consideration of your entire application, we have determined that, because of your conviction you are disqualified for employment and your eligibility will be removed from the register.

You may make a written request for reconsideration of this decision within fifteen (15) days to Field Director, Human Resources at 433 West Van Buren Street, Chicago, Illinois 60607-9404. The request must be in writing. Include in your letter the reasons for contesting the determination and attach all pertinent information that supports your position. The submission of this additional evidence is to be at no expense to the Postal Service.

The Field Director will render a final decision on your request.

Sincerely,

/s/ Dorothy A. Lambert

Manager, Employment and Developement

APPENDIX C

Memorandum and Order

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

Submitted January 5, 1989

January 11, 1989

Before

Hon. Harlington Wood, Jr., Circuit Judge

Hon. John L. Coffey, Circuit Judge

Hon. Frank H. Easterbrook, Circuit Judge

FRANK L. GRAY) Appeal from the
Plaintiff-Appellant,) United States
) States District
No. 87-3017 v.) Court for the
) Northern District
LAKE COUNTY SUPERIOUR) of Indiana,
COURT, LAKE COUNTY) Hammond Division.
PROSECUTOR'S OFFICE,) No. 87 C 209
AND LAKE COUNTY) Andrew P. Rodovich
PROBATION OFFICE,) Magistrate
Defendants-Appellees)

Order

In October 1985 Frank L. Gray was sentenced to a year's imprisonment. After being released, he filed this suit under 42 U.S.C. && 1983, 1985, seeking damages from the "Lake County Superior Court, Lake County Prosecutor's Office, [and] Lake County Probation Office" -entities he believes violated his federal rights in the course of the criminal proceedings.

The parties consented to the entry of judgement by a magistrate under 28 U.S.C. &636(c). The magistrate's opinion, which we attach, narrates the facts. We agree with the magistrate's conclusion (opinion at 7-9) that the federal courts lack jurisdiction to award injunctive relief, which would amount to appellate review of the state court's decision. (Collateral review is no longer available, because Gray did not file this case until after his release from prison.) We also agree with the magistrate's holding (opinion at 3-4) that the suit is barred by the eleventh amendment to the extent it seeks

damages from the Lake County Superior Court, a part of Indiana's state government.

The magistrate dismissed the damages claims against the Prosecutor's Office and the Probation Office on the basis of official immunity. The claims were properly dismissed, but not on this ground. Gray sued the offices, not officeholders. A suit against the government in its own name may not be dismissed on the basis of official immunity, a personal defense. [Owen v City of Independence, 445 U.S. 622 (1980)], [Brandon v Holt, 469 U.S. 464 (1985)]. Cf. [Kentucky v Graham, 473 U.S. 159, 165-68 (1985)]. This does not assist Gray, however, because a suit against the government as an entity encounters different hurdles. The only one we need consider is set out in [Monell v New York City Department of Social Services, 436 U.S. 658 (1978): principles of vicarious liability do not apply in cases under civil rights acts. To recover money from the government, the plaintiff must show

that the government's own policy, and not the unauthorized acts of public offficials, injured him. Gray does not contend that the Prosecutor's Office and Probation Office injured him by implementing their policies. He complains, rather, that their employees made blunders specific to his case. See the recitation at pages 1-3 of the magistrate's opinion. Contentions of this kind are insufficient under [Monell].

AFFIRMED

APPENDIX D

Judgement in Petition for Writ of Habeas Corpus

UNITED STATES DISTRICT COURT

Northern District of Indiana

Hammond Division

Frank L. Gray - JUDGEMENT IN A CIVIL CASE

v

State of Indiana - CASE NUMBER H 89-231

Decision by Court.

It is ordered and adjudged: Because petitioner was not in custody for the conviction at issue or for any other conviction at the time he filed his petition for writ of habeas corpus, the court hereby DISMISSES said petition for want of subject matter jurisdiction.

Date: August 25, 1989

Clerk: Richard E. Timmons

/s/ Deputy Clerk

APPENDIX D CONT.

Order of Denial of Petition for Habeas Corpus

ORDER

This matter is before the court on a Motion to Dismiss, filed on July 10, 1989, by respondents State of Indiana, "et al". By this motion, respondents ask the court to dismiss petitioner Frank L. Gary's petition for a writ of habeas corpus for want of subject matter jurisdiction, pointing out that petitioner is not (and was not at the time he filed his petition) in custody, as is required to establish jurisdiction in the federal courts for a petition for a writ of habeas corpus. Petitioner argues in response that even though he is no longer in physical custody, the "collateral consequences" of the state conviction at issue here resulted in a "civil restraint" sufficient to constitute custody for habeas purposes. (The "collateral consequences" claimed by petitioner seem to be limited to the fact that he "cannot engage in certain business according to civil laws

and the moral stigmas stemming from his conviction").

Petitioner was convicted of child molesting, a class D felony in Indiana, on October 3, 1985. Pursuant to that conviction, he was sentenced to a term of incarceration of one year. Although the record before the court does not indicate the beginning or ending dates of that incarceration, petitioner does inform the court that he was "unconditionally released from confinement before the Indiana Court of Appeals could issue a ruling on his appeal". The ruling of the Indiana Court of Appeals in petitioner's case was issued on December 11, 1986, almost 2 1/2 years before the May 27, 1989 filing of the instant petition, thus his "unconditional release from confinement" occurred at least 2 1/2 years before he filed this petition.

The law is clear that "The federal habeas statute gives the United States District Courts jurisdiction to entertain petitioners for habeas relief only from persons who are

'in custody' in violation of the Constitution of laws or treaties of the United States'". [Maleng v Cook, 109 S.Ct. 1923, 1925 (1989)] (quoting 28 U.S.C. & 22-11(c)(3)) (emphasis in original), see also 28 U.S.C. & 2254(a). The Supreme Court has interpreted the statutory language as requiring the petitioner to be "in custody" pursuant to the sentence or conviction under attack at the time petitioner files his habeas petition. [Maleng v Cook, 109 S.Ct. at 1925], see also [Carafas v LaVallee, 391 U.S. 234 (1968)]. The Court has expressly held that a habeas petitioner is not "in custody" when the sentence for the conviction at issue has fully expired before the filing of the petition. [Maleng v Cook, 109 S.Ct. at 1926].

Although petitioner in this case admits he was not in physical custody at the time he filed his petition and it is clear that his sentence has "fully expired", he nonetheless argues that the collateral consequences of his conviction -- the moral stigma and the

legal difficulties engaging in business -- fulfill the custody requirement. The law does not support petitioner's argument, however. It is true that where custody (and hence jurisdiction) is present when the petition is filed, collateral consequences (including inability to engage in certain businesses) do prevent the case from becoming moot when custody is subsequently absent, [Carafas v LaVallee, 391 U.S. at 237-38], but collateral consequences alone do not render a person "in custody" for the purpose of habeas corpus attack. [Maleng v Cook, 109 S.Ct. at 1926]; see also [Lefkowitz v Fair, 816 F.2d. 17 (1st Cir. 1987) If petitioner's sentence has fully expired prior to the filing of his petition, then, collateral consequences alone do not independently establish jurisdiction. Id.

Because petitioner was not in custody for the conviction at issue or for any other conviction (footnote 1) at the time he filed his petition for a writ of habeas corpus, the

court hereby DISMISSES said petition for want of subject matter jurisdiction.

ENTER: August 21, 1989

/s/ James T. Moody

JUDGE, UNITED STATES DISTRICT COURT

Footnote 1: The court would have jurisdiction to consider a collateral attack on a subsequent sentence or conviction at issue, if the sentence for that subsequent conviction had not yet expired. Petitioner has not alleged the existence of such a subsequent sentence or conviction, however, so the petition is not saved on that ground.

APPENDIX E

Order Denying Certificate of Probable Cause

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

HAMMOND DIVISION

Frank L Gray)

Plaintiff)

v)

STATE OF INDIANA, et al.)

Defendants)

ORDER

This matter is before the court on petitioner Frank L. Gray's request for the court to issue a certificate of probable cause so that he may appeal the court's dismissal of his petition for a writ of habeas corpus filed under 28 U.S.C. & 2254. The court had found pursuant to [Maleng v Cook, 109 S.Ct. 1923 (1989)], that petitioner was not "in custody" at the time he filed his habeas petition, and accordingly, the court granted the State's motion to dismiss. Because the court believes the language of

[Maleng] is clear, the court does not find that "the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are 'adequate to deserve encouragement to proceed further'. [Stuart v Gagnon, 837 F.2d 289, 290 (7th Cir. 1987)] (quoting Barefoot v Estelle, 463 U.S. 880, 893 n.4 (1983). The court, therefore, DENIES petitioner's request for a certificate of probable cause.

ENTER: October 20, 1989

/s/ James T. Moody

Judge, United States District Court

APPENDIX F

Judgement & Opinion

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, IL 60604

Submitted: March 27, 1990

March 30, 1990

Before

Hon. Kenneth F. Ripple, Circuit Judge

Hon. Daniel A. Manion, Circuit Judge

No. 89-3343) Appeal from the United
) States Dictrict Court
Frank L. Gray) for the Northern
Petitioner-Appellant) District of Indiana
v) Hammond Division
State of Indiana) No. 89 C 231
Respondent-Appellee) Judge James T. Moody

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. Sec. 2254. The district court dismissed the petition for lack of subject matter jurisdiction and declined to issue a certificate of probable cause.

Petitioner has now filed an application for a certificate of probable cause. This court has carefully reviewed the final order of the district court. We find no substantial showing of the denial of a federal right; the petitioner has failed to demonstrate the issues raised are debatable among jurists, a court could resolve the issues differently, or the questions deserve further proceedings. [Barefoot v Estelle, 463 U.S. 880, 893 n.4 (1983).

Accordingly, the request for a certificate of probable cause in DENIED.

RIPPLE, Circuit Judge. In voting to deny the certificate of probable cause, I note that the petitioner does not take issue with the district court's conclusion that his sentence had fully expired at the time he filed his petition in the district court. If he were serving a period of supervised release under a state parole statute or simular device, we would have, of course, a very difficult case.

APPENDIX G

Order of Denial of Petition to Rehear

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, IL 60604

May 21, 1990

Before

Hon. Kenneth F. Ripple, Circuit Judge

Hon. Daniel A. Manion, Circuit Judge

No. 89-3343) Appeal from the United
) States Dictrict Court
Frank L. Gray) for the Northern
Petitioner-Appellant) District of Indiana
No. 89-3343) Hammond Division
v) No. 89 C 231
State of Indiana) Judge James T. Moody
Respondent-Appellee)

This matter comes before the court for its consideration of the "Petition to Rehear Application for Probable Cause" filed herein on April 10, 1990, by pro se petitioner. On consideration thereof,

IT IS ORDERED said motion is hereby DENIED.

APPENDIX H

Order Granting Extension of Time

SUPREME COURT OF THE UNITED STATES

No. A-124

Frank L. Gray, Petitioner

v.

Indiana

ORDER

UPON CONSIDERATION of the application of the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-mentioned case, be and the same is hereby, extended to and including

October 19, 1990

/s/ John Paul Stevens

Associate Justice of the Supreme

Court of the United States

Dated this 15th

day of August, 1990.